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EXAMINER

SAGER, MARK ALAN

ART UNIT PAPER NUMBER

3714

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/757,652

Applicant(s)

CUMBERS, BLAKE

Examiner

M. A. Sager

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 10-15 and 20-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10-15, 20-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-5, 10-15, 20-29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 5-16, 19-25 of U.S. Patent No. 6783459 in view of Lu (5432864) and Franchi (5770533). With respect to application ‘652, Cumbers ‘459 essentially claims process or method of use of invention of instant application ‘652.

Cumbers ‘459 claims steps or features that further limits invention, but patentability did not lie within and thus by omitting those steps or features, a broader form of invention is provided that maintains the patentable steps/features and secures a broader form of invention. For instance, the steps/features pertaining to maintaining a library of anonymous customers files limits the form of invention, but patentability was not contained therein; thus, by omitting the claim language pertaining to maintaining a library of anonymous files a broader form of invention is secured.

Also, Cumbers ‘459 includes a process for a human being to review and compare files if the

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processor is only able to reduce the identity of the customer to two or more files, as particularly claimed. Lu discloses a verification system that teaches machine verification and, instances where a human reviews and compares files. The procedure for a human being to review files limits the invention by requiring human interaction. Lu teaches a process where a machine automatically compares files. Therefore, it would have been obvious to an artisan at a time prior to the invention to omit human interaction, as taught by Lu for machine comparison so as to preclude human costs for manual review such occurs as when machine successfully compares and retrieves files without manual review by a human. Also, '652 claims system/machine of Cumbers' 459 methods. It would have been obvious to an artisan to claim the system/machine of Cumbers' 459 method in order to protect that form of invention. Further, '652 claims player tracking at table games; that was by OFFICIAL NOTICE notoriously well known in use similarly to player tracking at gaming machines prior to '652 claimed invention, as evidenced at least by Applicants statements of prior art (sic) and further evidence by Franchi. For instance, there existed player tracking of a wagering game for table games and for game machines since some players prefer social play as permitted at table games such as poker, baccarat, or blackjack or twenty-one, etc., while other players prefer solitary play at game machines such as video poker, video blackjack (which includes reel machine). Further, a wagering game or a gaming machine may include a [gaming] table as consistent/conventional with the use of the language within the art. Therefore, it would have been obvious to an artisan at a time prior to the '652 claimed invention to add 'table' as claimed, as stated by Applicants as known, as further evidenced by Franchi to Cumbers' 459 system and method so as to increase security of who is being tracked for players who prefer social play at a table game like poker, baccarat or blackjack.

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The biometric data increases security of who is being tracked over card identification systems that is inherent/germane to biometric verification systems. Essentially, the form of wagering game (table vs. solitary/solo game machine) does not patentably distinguish over Cumbers' method and system in light of player tracking accepted at both forms of play.

3. Claims 1-5, 10-15, 20-29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3-22 of U.S. Patent No. 6554705 in view of Franchi (5770533). With respect to application '652, Cumbers '705 essentially claims process or method of use of invention of instant application '652. Cumbers '705 claim steps or features that further limits invention, but patentability did not lie within and thus by omitting those steps or features, a broader form of invention is provided that maintains the patentable steps/features and secures a broader form of invention. For instance, the steps/features pertaining to maintaining a library of anonymous customers files further limits the form of invention, but patentability was not contained therein; thus, by omitting the claim language pertaining to maintaining a library of anonymous files a broader form of invention is secured. Also, 652 claims system/machine of Cumbers '705 method. It would have been obvious to an artisan to claim the system/machine of Cumbers' 705 methods in order to protect that form of invention. Further regarding '652, player tracking at table games was by OFFICIAL NOTICE notoriously well known in use similarly to player tracking at gaming machines prior to '652 claimed invention, as evidenced at least by Applicants statements of prior art (sic) and further evidence by Franchi. For instance, there existed player tracking of a wagering game for table games and for game machines since some players prefer social play as permitted at table games such as poker, baccarat, or blackjack or twenty-one, etc., while other players prefer solitary play

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at game machines such as video poker, video blackjack (which includes reel machine). Further, a wagering game or a gaming machine may include a [gaming] table as consistent/conventional with the use of the language within the art. Therefore, it would have been obvious to an artisan at a time prior to the '652 claimed invention to add 'table' as claimed, as stated by Applicants as known, as further evidenced by Franchi to Cumbers' '705 system and method so as to increase security of who is being tracked for players who prefer social play at a table game like poker, baccarat or blackjack. The biometric data increases security of who is being tracked over card identification systems that is inherent/germane to biometric verification systems. Essentially, the form of wagering game (table vs. solitary/solo game machine) does not patentably distinguish over Cumbers' method and system in light of player tracking accepted at both forms of play.

4. Claims 1-5, 10-15 and 20-29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6234900 or over claims 1-9 of U.S. Patent No. 6142876 each in view of Franchi (5770533). With respect to application '652, Cumbers '876 and '900 each essentially claims invention of instant '652 application where '876 and '900 each claim steps or features that further limits invention, but patentability did not lie within and thus by omitting those steps or features, a broader form of invention is provided that maintains the patentable steps/features and secures a broader form of invention. For instance, the steps/features pertaining to entry of a player identification data claimed in '876 and '900 further limits the form of invention, but patentability was not contained therein; thus, by omitting the claim language pertaining to entry of player identification data a broader form of invention is secured. Also, '652 claims system/machine of Cumbers' '900 or '876 method. It would have been obvious to an artisan to claim the system/machine of Cumbers'

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'900 or '876 method in order to protect that form of invention. Further regarding '652, player tracking at table games was by OFFICIAL NOTICE notoriously well known in use similarly to player tracking at gaming machines prior to '652 claimed invention, as evidenced at least by Applicants statements of prior art (sic) and further evidence by Franchi. For instance, there existed player tracking of a wagering game for table games and for game machines since some players prefer social play as permitted at table games such as poker, baccarat, or blackjack or twenty-one, etc., while other players prefer solitary play at game machines such as video poker, video blackjack (which includes reel machine). Further, a wagering game or a gaming machine may include a [gaming] table as consistent/conventional with the use of the language within the art. Therefore, it would have been obvious to an artisan at a time prior to the '652 claimed invention to add 'table' as claimed, as stated by Applicants as known, as further evidenced by Franchi to Cumbers' 876 or '900 system and method so as to increase security of who is being tracked for players who prefer social play at a table game like poker, baccarat or blackjack. The biometric data increases security of who is being tracked over card identification systems that is inherent/germane to biometric verification systems. Essentially, the form of wagering game (table vs. solitary/solo game machine) does not patentably distinguish over Cumbers' method and system in light of player tracking accepted at both forms of play.

5. Claims 1-5, 10-15 and 20-29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 5-24, 26-38, esp. 23-24, 26-27, 31, and 33-36 of copending Application No. 10357832. Essentially, a means for passively acquiring a player's biometric identification is biometric identification means of '652 claims and means for transmitting the biometric data includes a processor of '652 claims. Also,

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Cumbers '832 claims invention of instant '652 application where '832 claims steps or features that further limits invention, but patentability did not lie within and thus by omitting those steps or features, a broader form of invention is provided that maintains the patentable steps/features and secures a broader form of invention. For instance, the steps/features pertaining to a player identification number claimed in '832 further limits the form of invention, but patentability was not contained therein; thus, by omitting the claim language pertaining to player identification number a broader form of invention is secured. It is further noted that Cumbers '652 teaches and discloses identification of player without active entry of personal player data (see reasons for allowance '900 or '876). Also, '652 claims system/machine of Cumbers' '900 or '876 method. It would have been obvious to an artisan to claim the system/machine of Cumbers' '900 or '876 method in order to protect that form of invention.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Essentially, the claim language 'remotely located' (line 2) is confusing in consideration of 'in proximity' (clm 20, line 3) to extent it is unclear for public to discern metes and bounds of invention.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-2, 4-5, 10-11, 13, 15, 20-21, 23, and 26-27 are rejected under 35 U.S.C. 102(b) as anticipated by Matchett (5229764). This holding is maintained from prior action for claims as amended as clarified herein. Response to Applicants' remarks of patentability is provided below and incorporated herein. Essentially, the claimed invention including 'wherein said biometric identification means communicates... and when verified, opening a players account... or creating... biometric data' is functional language that does not specify structure performing the function and Matchett is maintained as teaching all claimed structure, as broadly claimed. As stated in prior action, a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) (The preamble of claim 1 recited that the apparatus was "for mixing flowing developer material" and the body of the claim recited "means for mixing ..., said mixing means being stationary and completely submerged in the developer material". The claim was rejected over a reference that taught all the structural limitations of the claim for the intended use of mixing flowing developer. However, the mixer

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was only partially submerged in the developer material. The Board held that the amount of submersion is immaterial to the structure of the mixer and thus the claim was properly rejected.).

Also, as stated in prior action, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In *re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In *re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); In *re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). Thus, in this case, as best understood and as broadly claimed, Matchett discloses an electronic gaming machine (fig 10-11), a gaming system (figs. 1-11), a system and a method (figs 1-11) comprising a processor (ref. 114), a biometric identification means that is integrated in a gaming machine and that acquires physical features of player's face, or acquires a fingerprint of player (1:60-2:12, 2:17-20, 3:10-51, 6:34-48, figs.1-11, esp. 10-11), where biometric id means is remotely located from gaming machine (2:17-20, 6:34-48) so as to compare captured player biometric with database or library of biometric data files.

10. Claims 1-2, 4-5, 10-11, 13, 15, 20-21, 23, and 26-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Schneier (5768382). A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the

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claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) (The preamble of claim 1 recited that the apparatus was “for mixing flowing developer material” and the body of the claim recited “means for mixing ..., said mixing means being stationary and completely submerged in the developer material”. The claim was rejected over a reference which taught all the structural limitations of the claim for the intended use of mixing flowing developer. However, the mixer was only partially submerged in the developer material. The Board held that the amount of submersion is immaterial to the structure of the mixer and thus the claim was properly rejected.). While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board’s finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). “[A]pparatus claims cover what a device is, not what a device does.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). In this case, as best understood and as broadly claimed, Schneier discloses a system and method using biometric identification data for user/player identification/verification so as to permit continued access to a gaming machine including for games of chance or games involving making predictions of future events (abstract, 5:29-67, 7:7-8:27, 9:13-27, 15:11-16:37, 17:57-63, 23:9-24:46, 27:28-28:15, 36:26-37:12, 42:44-43:29)

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teaching claimed structure including a processor in communication with a biometric identification means such as retinal scanner or the like to compare captured biometric data of a player/user with a database of stored biometric data for verifying the identity of player and when verified opening players account to receive play data based on the verified players play of electronic gaming machine. It is further noted that biometric identification means invokes 112, sixth paragraph and thus the particular means described in the specification or their known equivalents are interpreted therein. In particular, Schneier discloses biometric identification means as a capturing fingerprint or facial features of player such as retinal scanner (15:11-15) and Applicant states that 'any known technical method' (5:29-6:11) be used to identify the customer which is interpreted as a statement of non-criticality of the process/device used to capture user/player biometric data and thus the device or technical method used to obtain/process identification of user/player cannot patentably distinguish. Also, Schneier includes opens a players account to receive play data based on the verified players play of electronic gaming machine such as after verifying identification of player by biometric identification means, receiving player game stats or tournament data or other play data to be stored in database. Further, regarding location of biometric identification means being either integrated or remote from gaming machine, Schneier includes a reader or scanner integrated in a gaming machine, but also includes software that resides in central database remote from gaming machine that performs the comparison (sic).

Claim Rejections - 35 USC § 103

11. Claims 3, 14, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matchett in view of Daugman (5291560). This holding is maintained from prior action and

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reiterated herein. Response to Applicants' remarks of patentability is provided below and incorporated herein. As best understood, Matchett discloses a machine or system as claimed including fingerprint and facial or retinal scan (supra) but lacks iris. Matchett also states that his invention includes 'all systems and configurations by which biometric and other data are continuously and/or intermittently taken and compared to a body of similar reference data for the purpose of authentication (13:36-46). Daugman discloses a system teaching identification based on iris analysis that is a passive biometric personal identification process that is superior to fingerprint analysis (abstract, 2:31-3:36, 4:20-40, figs. 1-12). Matchett emphasizes passive biometric personal identification. Therefore, it would have been obvious to an artisan at a time prior to the invention to add iris as taught by Daugman to Matchett's matrix for passive personal identification that is superior to fingerprint analysis. Particular biometric process fails to patentably distinguish.

12. Claims 3, 14, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneier in view of Daugman (5291560). Schneier discloses a system and method teaching claimed features/steps as broadly claimed (sic), but lacks iris. Schneier states other biometric authentication devices may be used with language 'and the like' and Applicant states that 'any known technical method' (5:29-6:11) be used to identify the customer which is interpreted as a statement of non-criticality of the process/device used to capture user/player biometric data and thus the device or technical method used to obtain/process identification of user/player cannot patentably distinguish. The scanning of iris for user authentication is notoriously well known as acknowledged by Applicant's background of prior art or as evidence by Daugman (5291560). Thus, it would have been obvious to an artisan at a time prior to the invention to add iris as

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admitted by Applicant as equivalent or as taught by Daugman to Schneier as a more accurate or alternative equivalent method of identification.

13. Claims 1-5, 10-15, and 20-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franchi (5770533) or Slater (5613912) each in view of Matchett. Franchi discloses a customer tracking of players of a wagering game or live gaming table where an anonymous user entering a related number (i.e. PIN) in a customer tracking system was known for opening a customer account for tracking at a gaming machine or gaming table (2:14-35, 38-67, 3:1-47, 4:63-7:46, esp. 7:12-15); while, Slater discloses bet tracking system for wagering game such as at a live gaming table so as to track gaming play of said player (abstract, figs. 1-4B) where player tracking may be for providing comps in order to entice player loyalty. Franchi and Slater each use player identification cards with associated player identification number to track play data at gaming machines including gaming tables and thus each lacks biometric identification means, as claimed. Matchett discloses an electronic gaming machine (fig 10-11), a gaming system (figs. 1-11), a system and a method (figs 1-11) comprising a processor (ref. 114), a biometric identification means that is integrated in a gaming machine and that acquires physical features of player's face, or acquires a fingerprint of player (1:60-2:12, 2:17-20, 3:10-51, 6:34-48, figs.1-11, esp. 10-11), where biometric id means is remotely located from gaming machine (2:17-20, 6:34-48) so as to provide unforgeable identification data with subsequent comparison of continuous or intermittent generated identification data in order to protect access or authentication of who is accessing system. Thus, it would have been obvious to an artisan at a time prior to the invention to add biometric identification means as taught/suggested by Matchett to either Franchi or Slater to provide unforgeable identification data with subsequent comparison of continuous or

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intermittent generated identification data in order to protect access or authentication of who is accessing system. This will improve security or integrity of player tracking so as to preclude someone using false access.

Further regarding iris, Franchi or Slater in view of Matchett lacks iris. However, Applicant states that 'any known technical method' (5:29-6:11) be used to identify the customer which is interpreted as a statement of non-criticality of the process/device used to capture user/player biometric data and thus the device or technical method used to obtain/process identification of user/player does not patentably distinguish. The scanning of iris for user authentication was notoriously well known as acknowledged by Applicant's background of prior art or as evidence only by Daugman (5291560, abstract, 2:31-3:36, 4:20-40, figs 1-12). Matchett also states that his invention includes 'all systems and configurations by which biometric and other data are continuously and/or intermittently taken and compared to a body of similar reference data for the purpose of authentication (13:36-46) and Matchett emphasizes passive biometric personal identification. Thus, it would have been obvious to an artisan at a time prior to the invention to add iris as admitted by Applicant as equivalent to Franchi or Slater each in view of Matchett for passive personal identification that is superior to fingerprint analysis. Particular biometric process fails to patentably distinguish.

14. Claims 12, 24-25 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneier in view of either Franchi (5770533) or Slater (5613912). Schneier discloses claimed invention including games of chance and games involving making predictions on future events that is interpreted as wagering games (supra) except live gaming table (clm 12, 28-29), track gaming play of said player (clm 24) and wagering (clm 25). It is noted that games of

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chance or games involving making predictions on future events include table games. Player tracking at a gaming table is by Official Notice notoriously well known. As evidence only, see background of invention therein (1:17-2:11, esp. 1:25-2:11). Franchi discloses a customer tracking of players of a wagering game or live gaming table where an anonymous user entering a related number (i.e. PIN) in a customer tracking system was known for opening a customer account for tracking at a gaming machine or gaming table (2:14-35, 38-67, 3:1-47, 4:63-7:46, esp. 7:12-15); while, Slater discloses bet tracking system for wagering game such as at a live gaming table so as to track gaming play of said player (abstract, figs. 1-4B) where player tracking may be for providing comps in order to entice player loyalty. Therefore, it would have been obvious to an artisan at a time prior to the invention to add live gaming table, track gaming play of said player and wagering as taught by either Franchi or Slater to Schneier's system and method for improved tracking of player game play for providing comps thereby.

Response to Arguments

15. Applicant's arguments filed Aug. 9, 2006 have been fully considered but they are not persuasive. As similarly commented in prior action in response to arguments regarding Applicants' assertion that Matchett fails to disclose at least one element of the claimed invention, the examiner respectfully disagrees. Matchett discloses an electronic gaming machine comprising claimed structure, as broadly claimed. Additionally, it is noted that Applicant acknowledges that Matchett is a passive system that is designed to initially identify and verify the user of a system, including computer-based gaming system. Thus, the claimed invention fails to preclude Matchett's verifying identify of the player. Essentially, the breadth of claim language fails to preclude Matchett as stated in holding above due to functional claim language

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not limiting to any structure performing such function and attempting to overcome Matchett by claiming function rather than structure in an apparatus claim (sic).

16. Applicant's arguments with respect to claims 1-5, 10-15, 20-29 has been considered but is moot in view of the new ground(s) of rejection.

Allowable Subject Matter

17. It is also noted that use of alternative language 'or creating...' fails to preclude anticipation by references. The Office acknowledges 'creating a new biometric data file when captured biometric data does not match any stored biometric data' is allowable subject matter in context of system/method/machine as per record of allowance of parent/grandparent patents; however, the present breadth of alternative claim language does not positively recite feature/step and thus fails to preclude art.

Conclusion

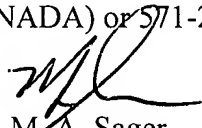
18. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. A. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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M. A. Sager
Primary Examiner
Art Unit 3712

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